

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAVONNE DAVIS,

Defendant-Appellant.

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UNPUBLISHED

January 27, 2005

No. 250901

Wayne Circuit Court

LC No. 03-001959-01

Before: Zahra, P.J., and Neff and Cooper, JJ.

MEMORANDUM.

Defendant appeals as of right from her convictions by a jury of first-degree home invasion, MCL 750.110a(2), and assault with intent to do great bodily harm less than murder, MCL 750.84. She was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of twenty-three to thirty-five years and five to thirty-five years for those respective convictions. We affirm.

Defendant's sole issue on appeal is that the trial court erred in denying her request to instruct the jury on the use of nondeadly force in self-defense.

The trial court "is required to give requested instructions only if the instructions are supported by the evidence or the facts of the case." *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). Whether a particular instruction is applicable is a question of law that is reviewed de novo. *People v Perez*, 469 Mich 415, 418; 670 NW2d 655 (2003). If an applicable instruction was not given, the defendant must show that the court's failure to give the requested instruction resulted in a miscarriage of justice. *People v Riddle*, 467 Mich 116, 124; 649 NW2d 30 (2002).

To justify the use of nondeadly force in self-defense, defendant must not have acted wrongfully and brought about the assault against which he seeks to defend himself. CJI2d 7.22(6). In other words, the defendant "was not the aggressor in bringing about the conflict." *People v Bright*, 50 Mich App 401, 406; 213 NW2d 279 (1973). See also *People v Townes*, 391 Mich 578, 592; 218 NW2d 136 (1974).

According to defendant's own testimony, she entered Dara Owens' home on her own initiative without being invited. While defendant claimed to have an "open invitation" from Owens' fiancé to enter at leisure, there was no evidence that Owens was aware of this invitation or that it extended to circumstances in which Owens was at home. Defendant did not announce her presence and surprised Owens in her bedroom. By defendant's account,<sup>1</sup> Owens was startled by defendant's sudden appearance and had every reason to believe defendant was an unlawful intruder when she produced the knife. Because defendant's own testimony showed that even if Owens assaulted her, as defendant claimed, she provoked the assault against which she sought to defend herself. Therefore, the evidence did not support an instruction on the use of nondeadly force in self-defense.

Affirmed.

/s/ Brian K. Zahra

/s/ Janet T. Neff

/s/ Jessica R. Cooper

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<sup>1</sup> Owens' account of the incident differed. She testified that defendant, armed with a knife, assaulted her while she was asleep.